

Attorney Docket No.: 319762US29



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK EXAMINING OPERATION**

In re the Application of:

THROAT THREADS APPAREL INC.

Application Serial No.: 77/351,070

Filed: December 13, 2007

Mark: DEKE

Class: 25, 35

Examining Attorney

Aisha Y. Salem

Law Office 113

**BOX RESPONSES**  
**NO FEE**

Honorable Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Commissioner:

**REQUEST FOR RECONSIDERATION**

This is a Response to the Office Action mailed July 21, 2008.

**REMARKS**

The Examining Attorney has continued and made final the refusal to register under Section 2(d) of the Lanham Act pursuant to the Trademark Act § 2(d), 15 U.S.C. § 1052(d).

Applicant submits as Exhibit 1, a signed and dated Trademark Consent Agreement signed by the owner of cited U. S. Registration No. 2,805,655.

The Trademark Consent Agreement between Throat Threads Apparel Inc. and Nudo Products Inc. is conclusive to establish that the use and registration of DEKE for the goods and services identified in the application is not likely to cause confusion. *See, In re Four Seasons Hotels, Ltd.*, 26 USPQ2d 1071, (Fed. Cir. 1993).



01-15-2009

In light of the signed Trademark Consent Agreement, Applicant respectfully requests the Examining Attorney withdraw the refusal to register.

The Examining Attorney is advised that Applicant is simultaneously filing a Notice of Appeal.

If the Examining Attorney has any remaining questions, the Examining Attorney is kindly requested to contact Applicant's undersigned counsel.

Respectfully submitted,

THROAT THREADS APPAREL INC.

By:



Kathleen Cooney-Porter  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314  
(703) 413-3000  
fax (703) 413-2220  
e-mail: [tmdocket@oblon.com](mailto:tmdocket@oblon.com)

Date: January 15, 2009  
KCP/ojb/cds {353368\_1.DOC

# **EXHIBIT 1**

## **TRADEMARK CONSENT AGREEMENT**

This Trademark Consent Agreement ("Consent Agreement") is made and entered into by and between Throat Threads Apparel Inc. (herein "Throat Threads") with offices at Davis Century Mansion, 1134 Plains Road, East Burlington, Ontario L7S 1W6 Canada and Nudo Products Inc. (herein "Nudo Products") with offices at 1500 Taylor Avenue, Springfield, Illinois 62703.

WHEREAS, Throat Threads Apparel Inc. is the owner of record of United States Trademark Registration No. 3,177,050 for DEKE AND DESIGN; and

WHEREAS, Throat Threads Apparel Inc. is the owner of record for United States Trademark Application Serial No. 77/351,070 for DEKE; and

WHEREAS, Throat Threads Apparel Inc. recognizes the validity and subsistence of Nudo Product's trademark Registration No. 2,805,655 for the trademark DEKE for hockey pucks for use on synthetic ice, in International Class 28; and

WHEREAS, Nudo Products recognizes the validity and subsistence of Throat Threads' trademark DEKE AND DESIGN, Registration No. 3,177,050 for apparel, namely t-shirts, sweatshirts, hats, jackets, long sleeve shirts, tank tops, pants, and underwear, in International Class 25 and apparel screen printing and embroidery services, in International Class 40; and

NOW, THEREFORE, the parties hereto desire to avoid conflict and/or any litigation, proceedings before the Trademark Trial and Appeal Board (TTAB) or the U.S. Courts; in consideration of the foregoing.

1.) The parties agree that during the period in which the parties have been concurrently using their trademarks in connection with the relevant trade channels, neither party is aware of any instance of actual confusion by the public concerning their parties' trademarks,

and the parties truly believe and agree that in the future there will be no instance of actual or likely confusion by the public concerning their respective trademarks and related goods and services.

In the event either of the parties become aware of any consumer confusion arising from the concurrent use of the respective trademarks, such parties shall notify the party, and the parties agree to cooperate to take appropriate actions to avoid such confusion in the future.

2.) Nudo Products consents to the use and registration by Throat Threads of its DEKE trademark, Federal Trademark Application Serial No. 77/351,070 (See Exhibit 1).

3.) Nudo Products consents to the continued registration and use by Throat Threads of its DEKE AND DESIGN trademark, U.S. Registration No. 3,177,050 for apparel, namely t-shirts, sweatshirts, hats, jackets, long sleeve shirts, tank tops, pants, and underwear, in International Class 25, apparel screen printing and embroidery services, in International Class 40.

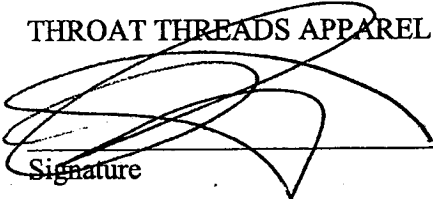
4.) Throat Threads consents to the continued registration and use by Nudo Products of its DEKE AND DESIGN trademark, U.S. Registration No. 2,805,655 for hockey pucks for use on synthetic ice.

5.) Neither party shall challenge or contest the use or registration of the mark of the other for the specified goods and services except on grounds of abandonment.

This agreement shall inure to the benefit of each party and its successors and assigns, and may be freely assigned along with the rights to its respective marks and registrations. The undersigned signatories represent and warrant that they have full legal authority to bind and sign on behalf of Nudo Products and Throat Threads respectively.

This Consent Agreement may be executed in duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THROAT THREADS APPAREL INC.

  
Signature

Russ Fearon

Name

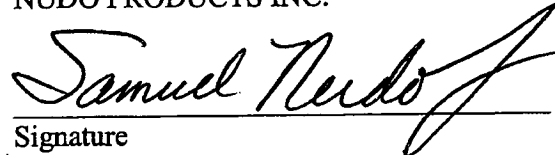
President

Title

January 8, 2009

Date

NUDO PRODUCTS INC.

  
Signature

SAMUEL NUDO JR

Name

VP

Title

12-5-08

Date

KCP/mjo {I:\ATTY\KCP\6697-319762US-AGR.DOC}

# **EXHIBIT 1**



## United States Patent and Trademark Office

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TARR Status	ASSIGN Status	TDR	TTAB Status
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# DEKE

**Word Mark  
Goods and  
Services****DEKE**

IC 009. US 021 023 026 036 038. G & S: Eyewear of all types and part thereof, namely, sunglasses, eyeglasses, goggles for the practice of sports and for exercise; computer bags

IC 018. US 001 002 003 022 041. G & S: Sporting bags; leather keychains, luggage and travel gear, namely, luggage straps, travel bags, garment bags, briefcases, portfolios, attache cases; tote bags, athletic bags, duffel bags, beach bags, toiletry cases sold empty, school bags, knapsacks, wrist packs, wallets, billfolds, business card cases, credit card cases, key cases, change purses

IC 025. US 022 039. G & S: Sportswear, namely, trousers, pants, slacks, jeans, shorts, skirts, capri pants, sport shirts, dress shirts, vests, blouses, blousons, chemises, tops, sweatshirts, t-shirts, polo shirts, knitwear, namely, knit shirts and caps, tank tops, turtlenecks, sweaters, cardigans, leotards, underwear, swimwear, bathing suits, cover ups; athletic apparel, namely, shirts, t-shirts, shorts, pants, jackets, cycling shorts, sport knits, namely, knit jackets, sport shirts, golf jackets, golf shirts, golf sweaters, golf trousers, unitards, tights, tracksuit trousers, sweatpants, jogging suits, under garments; jackets and outerwear, namely, denim jackets, coats, duffel coats, overcoats, rainwear, rain jackets and coats, wind resistant jackets, windcheaters, outerwear jackets, sport coats, blazers, vests; footwear, namely, shoes, sneakers, sandals, boots and golf shoes; accessories, namely, belts, gloves, mittens, ties, scarves, shawls, neck scarves, shoulder scarves, underwear, socks, hosiery; headgear, namely, caps, hats, toques, visors, head scarves; gloves for cycling

IC 028. US 022 023 038 050. G & S: Ice skates, beach balls, golf balls, sports balls, namely, basketballs, soccer balls, footballs, rugby balls, lacrosse balls, tennis balls, racket balls, squash balls, ping pong balls, volleyballs, baseballs and broomballs, baseball and softball bats, hockey sticks, hockey stick shafts, hockey stick blades, tennis rackets, skis, namely, downhill skis, cross-country skis and water skis, ski boots, ski poles snowboards, golf clubs, golf club head covers, in-line skates, plastic disk for tossing between players; sports mitts for baseball and softball, gloves for baseball, softball, golf, hockey, soccer and football; protective padding for football, soccer and hockey; protective hockey uniform, namely, lower body suits with protective layers integral thereto

IC 035. US 100 101 102. G & S: Retail store services in the field of footwear, apparel, bags, sporting goods and

related accessories

**Standard  
Characters  
Claimed****Mark Drawing  
Code** (4) STANDARD CHARACTER MARK**Serial Number** 77351070**Filing Date** December 13, 2007**Current Filing  
Basis** 1B**Original Filing  
Basis** 1B**Owner** (APPLICANT) Throat Threads Apparel Inc. CORPORATION CANADA 1134 Plains Road East Burlington, Ontario  
CANADA L7S1W6**Attorney of  
Record** Kathleen Cooney-Porter**Prior  
Registrations** 3177050**Type of Mark** TRADEMARK. SERVICE MARK**Register** PRINCIPAL**Live/Dead  
Indicator** LIVE

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Serial Number: 77351070 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

DEKE

(words only): DEKE

Standard Character claim: Yes

Current Status: An office action making FINAL a refusal to register the mark has been mailed.

Date of Status: 2008-07-21

Filing Date: 2007-12-13

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 113

Attorney Assigned:  
SALEM AISHA

Current Location: M4X -TMO Law Office 113 - Examining Attorney Assigned

Date In Location: 2008-07-21

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LAST APPLICANT(S)/OWNER(S) OF RECORD

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1. Throat Threads Apparel Inc.

**Address:**

Throat Threads Apparel Inc.  
1134 Plains Road East  
Burlington, Ontario L7S1W6  
Canada

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Canada

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=77351070>

10/28/2008

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**GOODS AND/OR SERVICES**

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**International Class: 009****Class Status: Active**

Eyewear of all types and part thereof, namely, sunglasses, eyeglasses, goggles for the practice of sports and for exercise; computer bags

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**International Class: 018****Class Status: Active**

Sporting bags; leather keychains, luggage and travel gear, namely, luggage straps, travel bags, garment bags, briefcases, portfolios, attache cases; tote bags, athletic bags, duffel bags, beach bags, toiletry cases sold empty, school bags, knapsacks, wrist packs, wallets, billfolds, business card cases, credit card cases, key cases, change purses

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**International Class: 025****Class Status: Active**

Sportswear, namely, trousers, pants, slacks, jeans, shorts, skirts, capri pants, sport shirts, dress shirts, vests, blouses, blousons, chemises, tops, sweatshirts, t-shirts, polo shirts, knitwear, namely, knit shirts and caps, tank tops, turtlenecks, sweaters, cardigans, leotards, underwear, swimwear, bathing suits, cover ups; athletic apparel, namely, shirts, t-shirts, shorts, pants, jackets, cycling shorts, sport knits, namely, knit jackets, sport shirts, golf jackets, golf shirts, golf sweaters, golf trousers, unitards, tights, tracksuit trousers, sweatpants, jogging suits, under garments; jackets and outerwear, namely, denim jackets, coats, duffel coats, overcoats, rainwear, rain jackets and coats, wind resistant jackets, windcheaters, outerwear jackets, sport coats, blazers, vests; footwear, namely, shoes, sneakers, sandals, boots and golf shoes; accessories, namely, belts, gloves, mittens, ties, scarves, shawls, neck scarves, shoulder scarves, underwear, socks, hosiery; headgear, namely, caps, hats, toques, visors, head scarves; gloves for cycling

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**International Class: 028****Class Status: Active**

Ice skates, beach balls, golf balls, sports balls, namely, basketballs, soccer balls, footballs, rugby balls, lacrosse balls, tennis balls, racket balls, squash balls, ping pong balls, volleyballs, baseballs and broomballs, baseball and softball bats, hockey sticks, hockey stick shafts, hockey stick blades, tennis rackets, skis, namely, downhill skis, cross-country skis and water skis, ski boots, ski poles snowboards, golf clubs, golf club head covers, in-line skates, plastic disk for tossing between players; sports mitts for baseball and softball, gloves for baseball, softball, golf, hockey, soccer and football; protective padding for football, soccer and hockey; protective hockey uniform, namely, lower body suits with protective layers integral thereto

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**International Class: 035****Class Status: Active**

Retail store services in the field of footwear, apparel, bags, sporting goods and related accessories

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

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**ADDITIONAL INFORMATION**

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**Prior Registration Number(s):**  
3177050

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2008-07-21 - Notification Of Final Refusal Emailed

2008-07-21 - Final refusal e-mailed

2008-07-21 - Final Refusal Written

2008-07-02 - Amendment From Applicant Entered

2008-07-02 - Communication received from applicant

2008-07-02 - Assigned To LIE

2008-07-01 - PAPER RECEIVED

2008-03-21 - Notification Of Non-Final Action E-Mailed

2008-03-21 - Non-final action e-mailed

2008-03-21 - Non-Final Action Written

2008-03-21 - Assigned To Examiner

2007-12-18 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Kathleen Cooney-Porter

**Correspondent**

KATHLEEN COONEY-PORTER  
OBLON, SPIVAK, MCCLELLAND, MAIER  
1940 DUKE ST  
ALEXANDRIA, VA 22314-3451  
Phone Number: (703) 413-3000  
Fax Number: (703) 413-2220

